

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

Plaintiff,

vs.

STEPHEN J. CERVENY,

Defendant.

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8:04cv94

MEMORANDUM AND ORDER

This matter is before the court on filing no. 120, the Judgment by the Eighth Circuit Court of Appeals dismissing the appeal by the plaintiff, Billy Tyler, and assessing the \$455 appellate filing and docketing fees against Mr. Tyler. Because the plaintiff was a prisoner subject to the Prison Litigation Reform Act, the Eighth Circuit's Judgment states in pertinent part: "Appellant is assessed the full \$455 appellate and docketing fees. This court remands collection of those fees to the district court."

The Eighth Circuit has instructed this court to assess an initial partial appellate filing fee in a reasonable amount based on information available to the court. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). However, during the appeal, Mr. Tyler was released from custody, having served his sentence. Therefore, collection of the filing fee may not be possible. Nevertheless, if funds remain in Mr. Tyler's inmate trust account, or if, for any other reason, collection of the fees becomes possible, the court hereby orders that all present and future custodians, if any, of the plaintiff or of his trust account shall collect and remit the \$455 appellate filing fees in the manner required by 28 U.S.C. § 1915(b)(2), if funds are or become available to do so.

SO ORDERED.

DATED this 16th day of April, 2007.

BY THE COURT:

s/ Richard G. Kopf
United States District Judge